

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**STEVE SACHS, Derivatively on behalf of WAVE
SYSTEMS CORP.,**

Plaintiff,

v.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN BUSHNELL,
GEORGE GILDER and JOHN E.
McCONNAUGHY, JR.,**

Defendants,

and

**WAVE SYSTEMS CORP., a Delaware
Corporation,**

Nominal Defendant.

**CIVIL ACTION
NO. 04-30032-MAP**

(Additional captions continued on next page)

**DEFENDANTS' RESPONSE TO PLAINTIFFS SACHS
AND HARVEY'S MOTION TO CONSOLIDATE CASES
AND APPOINT CO-LEAD AND LIAISON COUNSEL**

**JEFF SWANSON, Derivatively on behalf of
WAVE SYSTEMS CORP.,**

Plaintiff,

v.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN BUSHNELL,
GEORGE GILDER and JOHN E.
McCONNAUGHY, JR.,**

Defendants,

and

**WAVE SYSTEMS CORP., a Delaware
Corporation,**

Nominal Defendant.

**CHARLENE HARVEY, Derivatively on behalf of
WAVE SYSTEMS CORP.,**

Plaintiff,

v.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN BUSHNELL,
GEORGE GILDER and JOHN E.
McCONNAUGHY, JR.,**

Defendants,

and

**WAVE SYSTEMS CORP., a Delaware
Corporation,**

Nominal Defendant.

**CIVIL ACTION
NO. 04-30038-KPN**

**CIVIL ACTION
NO. 04-30044-MAP**

Two of the plaintiffs (Steve Sachs and Charlene Harvey) in the above three shareholder derivative actions have filed a joint Motion for (i) consolidation, (ii) approval of lead plaintiffs' selection of lead counsel, and (iii) entry of a proposed pretrial order. By way of information, Defendants, Steven Sprague, Gerard T. Feeney, John E. Bagalay, Jr., Nolan Bushnell, George Gilder and John E. McConnaughey, Jr., and Nominal Defendant Wave Systems Corp. (hereinafter "Defendants"), respond to Plaintiffs' Motion as follows:

1. Defendants do not oppose the consolidation of the above-captioned three derivative actions.

2. Defendants take no position on the issue of the appropriate lead counsel.

3. Defendants agree to the schedule proposed by Plaintiffs in the submitted proposed Pretrial Order No. 1 of thirty (30) days from the entry of the Order for Plaintiffs to file an amended Consolidated Derivative Complaint and thirty (30) days from the filing of the amended Consolidated Derivative Complaint for Defendants to answer or otherwise respond to the amended Consolidated Derivative Complaint. Defendants reserve all legal defenses, including jurisdictional defenses.

4. In light of the fact that Defendants agree with the filing schedule proposed by Plaintiffs, Defendants respectfully submit that the suggested schedule should be entered and Plaintiffs should be directed to file an Amended Consolidated Derivative Complaint by May 3, 2004.

5. Defendants disagree, however, that any of the plaintiffs have met the requirements of Fed. R. Civ. P. 23.1. Defendants reserve the right to address that issue at the appropriate procedural juncture.

6. Furthermore, Defendants deny the substantive allegations contained in the motion and deny that Wave Systems Corp.'s stock traded at artificially inflated levels due to any conduct of Defendants.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN
BUSHNELL, GEORGE GILDER and JOHN E.
McCONAUGHY, JR.,**

By their attorneys,

/s/ Eunice E. Lee

Robert A. Buhlman, BBO #554393

Eunice E. Lee, BBO #639856

BINGHAM McCUTCHEN LLP

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(617) 951-8000

Dated: March 31, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was electronically served upon the attorney of record for each party on March 31, 2004.

/s/ Eunice E. Lee

Eunice E. Lee